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TRASK BRITT
P.O. BOX 2550
SALT LAKE CITY, UT 84110

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JUN 23 2004

OFFICE OF PETITIONS

In re Application of :
Wood, et al :
Application No. 10/005,402 : ON PETITION
Receipt Date: December 5, 2001 :
Docket No.: 2825.10US (90- :
0051.12) :

This is a decision on the renewed petition filed September 10, 2003, requesting that the application a filing date of December 5, 2001 instead of the presently accorded filing date of February 2, 2002. This is also a decision on the petition to withdraw from issue.

The petition to accord the above-identified application a filing date of December 5, 2001 is **GRANTED TO THE EXTENT INDICATED HEREIN.**

The application was deposited December 5, 2001. The Notice mailed December 26, 2001 by the Office of Initial Patent Examination notified applicant that the application had been accorded a filing date but that Figure 4 as described in the specification appeared to have been omitted from the application.

The Notice permits applicant to either: (1) promptly establish prior receipt in the PTO of the drawing(s) at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted drawing(s) in a nonprovisional application and accept the date of such submission as the application filing date. An applicant asserting that the missing drawings were in fact deposited in the PTO with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted drawings in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted drawing(s) with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such drawing(s) and a petition under 37 CFR 1.182 (with the petition

fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the Notice (37 CFR 1.181(f)).

A response to the Notice was received February 1, 2002. A decision on petition was mailed July 11, 2003.

Petitioner continues to argue that the return postcard date stamped by the Office on December 5, 2001 supports petitioner's contention that the application as filed included Figure 4.

Petitioner's attention is again drawn to the fact that the return postcard indicates, *inter alia*, the receipt of three sheets of formal drawings containing 6 figures. Sheet one contains Figures 1A, 1B, and 1C. Sheet 2 contains Figures 2A and 2B. Sheet 3 contains Figure 3. Hence, the Office did receive three sheets of drawings containing a total of 6 figures. As indicated, Figure 4 does not appear on any of the drawing sheets received. Therefore, the postcard does not establish the receipt of Figure 4 in the Office on December 5, 2001.

However, petitioner has submitted an amendment canceling reference to Figure 4. In view of the submission of the amendment canceling reference to the figure in controversy and the examiner of record's indication that the amendment may be entered, applicant is entitled to a filing date of December 5, 2001.

Hence, Figure 4, submitted on February 1, 2002, will not be entered into the record.

An alternative petition to withdraw from issue was included with the instant renewed petition for filing date. As the instant application has been accorded the requested filing date, albeit, without the inclusion of Figure 4, the petition to withdraw from issue is deemed unnecessary.

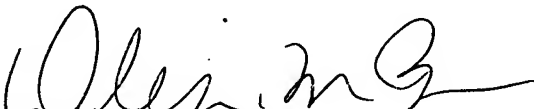
Accordingly, the petition to withdraw from issue is **DISMISSED AS MOOT**.

Petitioner is entitled to a refund of the \$130.00 petition fee for a petition to withdraw from issue fee. Petitioner may request a refund by writing to the Finance Office, Refund Section. A copy of this decision should accompany any request for refund.

This application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of

December 5, 2001 without the entry of Figure 4. Thereafter, the application file is to be forwarded to Group Art Unit 2829 for formal entry of the amendment canceling reference to Figure 4.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0310.

A handwritten signature in cursive script, appearing to read 'Alesia M. Brown', written in black ink.

Alesia M. Brown

Senior Petitions Attorney
Office of Petitions